

JAC
JW**Gates & Cooper** LLPHoward Hughes Center
6701 Center Drive West, Suite 1050
Los Angeles, California 90045**FAX TRANSMISSION TO USPTO**TO: Commissionet for Patents
Attn: **Examiner Fred I. Ehichioya**
Patent Examining Corps
Facsimile Center
Alexandria, VA 22313-1450FROM: George H. Gates
OUR REF.: SVL920050710US1
TELEPHONE: (310) 642-4146Total pages, including cover letter: 16**PTO FAX NUMBER: 571-273-2885**

If you do NOT receive all of the pages, please telephone us at (310) 641-8797, or fax us at (310) 641-8798.

Title of Document Transmitted:	TRANSMITTAL SHEETS AND APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(B) WITH EXHIBITS A AND B.
Applicant:	Jane W. Chang et al.
Serial No.:	09/827,500
Filed:	April 6, 2001
Group Art Unit:	2162
Title:	WIRELESS INFORMATION RETRIEVAL
Our Ref. No.:	SVL920050710US1

Please charge all fees to Deposit Account No. 09-0460 of IBM Corporation, the assignee of the present application.

By: Name: George H. Gates
Reg. No.: 33,500

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on the date shown below.


SignatureJune 6, 2006
Date



Notice of Allow. Date: March 9, 2006
Confirmation No.: 2162

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Jane Wen Chang et al.	Examiner:	Fred I. Ehichioya
Serial No.:	09/827,500	Group Art Unit:	2162
Filed:	April 6, 2001	Docket:	SVL920050710US1
Title:	WIRELESS INFORMATION RETRIEVAL		

CERTIFICATE OF MAILING OR TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being filed via facsimile transmission to the U.S. Patent and Trademark Office on June 6, 2006.

By: [Signature]
Name: George H. Gates

MAIL STOP ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

We are transmitting herewith the attached:

- ☒ Transmittal sheet, in duplicate, containing a Certificate of Mailing or Transmission under 37 CFR 1.8.
- ☒ Application for Patent Term Adjustment Under 37 C.F.R. §1.705(b) with Exhibits A and B.

Please consider this a **PETITION FOR EXTENSION OF TIME** for a sufficient number of months to enter these papers, if appropriate.

Please charge all fees to Deposit Account No. 09-0460 of IBM Corporation, the assignee of the present application. A duplicate of this paper is enclosed.

Customer Number 45729
GATES & COOPER LLP
Howard Hughes Center
6701 Center Drive West, Suite 1050
Los Angeles, CA 90045
(310) 641-8797

By: [Signature]
Name: George H. Gates
Reg. No.: 33,500
GHG/bjs

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jane Wen Chang et al. Examiner: Fred I. Ehichioya
Serial No.: 09/827,500 Group Art Unit: 2162
Filed: April 6, 2001 Docket: G&C 30571.321-US-01
Title: WIRELESS INFORMATION RETRIEVAL

CERTIFICATE OF MAILING OR TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being filed via facsimile transmission to the U.S. Patent and Trademark Office on June 6, 2006.

By: 

Name: George H. Gates

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)

Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Introduction

In accordance with 37 C.F.R. §1.705(b), this Application for Patent Term Adjustment is being submitted to request reconsideration of the patent term adjustment indicated in the Notice of Allowance for the above-identified patent application.

This Application for Patent Term Adjustment is being filed no later than the payment of the issue fee, but is not being filed earlier than the date of mailing of the Notice of Allowance.

In addition, this application for patent term adjustment is accompanied by:

- (1) The fee set forth in § 1.18(e); and
- (2) A statement of the facts involved, specifying:
 - (i) The correct patent term adjustment and the basis or bases under § 1.702 for the adjustment;
 - (ii) The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled;
 - (iii) Whether the patent is subject to a terminal disclaimer and any expiration date specified in the terminal disclaimer; and

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(iv)(A) Any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704; or

(B) That there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(1) The fee set forth in § 1.18(e)

Please charge Deposit Account No. 09-0460 of IBM Corporation, the assignee of the present application, in the amount of \$200.00 to cover the fee set forth in 37 C.F.R. §1.18(e). Also please credit any overpayments or charge any underpayments to Deposit Account No. 09-0460.

(2) A statement of the facts involved, specifying

(i) The correct patent term adjustment and the basis or bases under § 1.702 for the adjustment

The "Determination of Patent Term Adjustment under 35 U.S.C. 154(b)" accompanying the Notice of Allowance dated March 9, 2006 provides that the Patent Term Adjustment to date is "0" days. In addition, the Patent Term Adjustment History in PAIR (attached hereto as Exhibit A) shows that the PTA to date is "0" days based upon a PTO delay of 298 days and an Applicant delay of 332 days.

Applicants' attorney submits that the correct patent term adjustment is 464 days, based on a PTO delay of 520 days and an Applicant delay of 56 days.

Specifically, Applicants' attorney submits that the PTO erred in its calculation of the patent term adjustment, by charging the Applicants with a delay of 301 days for failure to timely respond to a Non-Final Rejection mailed February 27, 2004, when, in fact, the delay was solely due to an error by the PTO (apparently the Non-Final Rejection was not mailed, and the PTO did not discover its error until December 20, 2004). It is this error that provides the basis under 37 C.F.R. §1.702(a) for the correct patent term adjustment, because the PTO, due to this error, failed to take certain actions within specified time frames.

(ii) The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled

Referring to the application's Patent Term Adjustment History in PAIR (attached hereto as Exhibit A) and the Image File Wrapper in PAIR (attached hereto as Exhibit B), the following is a statement of facts identifying the relevant dates as specified in 37 C.F.R. §§1.703(a) through (e) and 37 C.F.R. §§1.704(a) through (e) for which an adjustment is sought:

1. On page 2 of the Patent Term Adjustment History of Exhibit A, there is an entry dated 02-27-2004 entitled "Mail Non-Final Rejection." There is no corresponding entry in the Image File Wrapper of Exhibit B.
2. On page 2 of the Patent Term Adjustment History of Exhibit A, there is an entry dated 12-20-2004 entitled "Mail Notice of Restarted Response Period." The corresponding entry in the Image File Wrapper of Exhibit B is also dated 12-20-2004 and is entitled "Non-Final Rejection."
3. The entire time period from three months after the "Mail Non-Final Rejection" dated 02-27-2004 to the "Response after Non-Final Action" dated 03-24-05 is charged against the Applicants, as applicant delay, in the amount of 301 days.
4. Applicants' attorney submits that the Office erred in charging this time period against the Applicants, as applicant delay.
5. It appears that the "Mail Non-Final Rejection" dated 02-27-2004 is in error. The lack of a corresponding entry in the Image File Wrapper indicates that the Non-Final Rejection was never mailed.
6. Applicants never received or responded to a Non-Final Rejection dated 02-27-2004.
7. It appears that this error was recognized by the PTO on 12-20-2004, which is the date of the "Mail Notice of Restarted Response Period." However, as shown in the Image File Wrapper of Exhibit B, the actual document mailed was a "Non-Final Rejection," not a "Notice of Restarted Response Period."
8. Indeed, had there been a Non-Final Rejection dated 02-27-2004, the time period for responding would have expired on 08-27-2004 and the application would have been abandoned for failure to respond within the time period of the Non-Final Rejection dated 02-27-2004. Again, it appears that the PTO recognized this error as being its own error, because no such abandonment occurred.

9. Consequently, Applicants' attorney submits that the PTO erred in its calculation of the patent term adjustment, by charging the Applicants with a delay of 301 days for failure to timely respond to a Non-Final Rejection mailed February 27, 2004, when, in fact, the delay was solely due to an error by the PTO.

The following is a calculation of the adjustment as specified in 37 C.F.R. §1.703(f) to which the patent is entitled:

1. The Office mailed a Non-Final Rejection on December 20, 2004, not February 27, 2004, resulting in an additional delay of 222 days attributable to the Office, beyond the 4-month period allotted for an PTO response under CFR §1.703(a)(2), i.e., from May 13, 2004 to December 20, 2004.

2. The additional delay of 222 days is added to the 298 days of delay previously attributed to the PTO, for a total of 520 days of delay attributable to the PTO.

3. The 301 days of delay erroneously attributed to the Applicants is subtracted from the 520 days of delay previously attributed to the Applicants, for a total of 219 days delay attributable to the Applicants.

4. Additional delay attributable to the Applicants includes: (1) 4 days of delay in submitting a Response after Non-Final Action on 03-24-2005; and (2) 21 days of delay due to the submission of a Petition to Withdraw from Issue dated 02-17-2006 and extending through to the mailing of a Notice of Allowance dated 03-09-2006.

5. Therefore, Applicants' attorney submits that the correct patent term adjustment is 219 (219+4+21) days delay attributable to the Applicants subtracted from 520 days of delay attributable to the PTO for a total patent term adjustment of 306 days.

(iii) Whether the patent is subject to a terminal disclaimer and any expiration date specified in the terminal disclaimer

The above-identified patent application is not subject to a terminal disclaimer.

(iv)(A) Any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704

Applicants' attorney submits that, under 37 C.F.R. §1.704, there were circumstances during the prosecution of the application that constitute a failure to engage in reasonable efforts to

conclude processing or examination of the application as set forth in 37 CFR §1.704, comprising the following:

1. There were 31 days of delay by the Applicants in submitting an Amendment after Final Rejection on 11-14-2003, under 37 C.F.R. §1.704(b).
2. There were 4 days of delay by the Applicants in submitting a Response after Non-Final Action on 03-24-2005, under 37 C.F.R. §1.704(b).
3. There were 21 days of delay in submitting a Petition to Withdraw from Issue dated 02-17-2006 through the mailing of a Notice of Allowance dated 03-09-2006, under 37 C.F.R. §1.704(c)(10).

Conclusion

Applicants' attorney requests that this Application for Patent Term Adjustment be granted and that the patent term adjustment indicated on the Notice of Allowance be increased to 464 days.

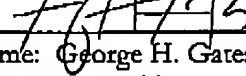
Should the Office believe minor matters still remain that can be resolved in a telephone interview, the Office is urged to call Applicants' undersigned attorney.

Respectfully submitted,

GATES & COOPER LLP
Attorneys for Applicants

Howard Hughes Center
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Date: June 6, 2006

By: 
Name: George H. Gates
Reg. No.: 33,500

GHG/

Exhibit A

Search results as of: 06-02-2006::19:21:05 E.T.

Patent Term Adjustment

Filing or 371(c) Date:	04-06-2001	USPTO Delay (PTO) Delay (days):	298
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	332
Post-Issue Petitions (days):	+0	Total Patent Term Adjustment (days):	0
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
03-09-2006	Mail Notice of Allowance		
03-09-2006	Mail Examiner's Amendment		
03-06-2006	Notice of Allowance Data Verification Completed		
03-06-2006	Examiner's Amendment Communication		
09-11-2005	Examiner Interview Summary Record (PTOL - 413)		
02-17-2006	Information Disclosure Statement considered		
02-17-2006	Reference capture on IDS		
02-17-2006	Information Disclosure Statement (IDS) Filed		
03-02-2006	Date Forwarded to Examiner		
02-17-2006	Request for Continued Examination (RCE)		
03-02-2006	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		
02-21-2006	Record Petition Decision of Granted to Withdraw from Issue		
02-17-2006	Workflow - Request for RCE - Begin		
02-17-2006	Petition Entered		
02-03-2006	Dispatch to FDC		
12-29-2005	Miscellaneous Incoming Letter		
01-13-2006	Application Is Considered Ready for Issue		
12-29-2005	Issue Fee Payment Verified		
12-29-2005	Statement Filed Indicating a Loss of Entitlement to Small Entity Status		
12-29-2005	Issue Fee Payment Received		
12-13-2005	Correspondence Address Change		
10-04-2005	Mail Notice of Allowance		
10-04-2005	Mail Examiner's Amendment		
09-30-2005	Notice of Allowance Data Verification Completed		
09-30-2005	Examiner's Amendment Communication		
09-11-2005	Examiner Interview Summary Record (PTOL - 413)		
09-23-2005	Preliminary Amendment		
09-08-2005	Date Forwarded to Examiner		
09-08-2005	Date Forwarded to Examiner		
08-24-2005	Request for Continued Examination (RCE)		
	DISPOSAL FOR A RCE/CPA/129 (express abandonment if		

09-08-2005	CPA)	
08-24-2005	Workflow - Request for RCE - Begin	
07-18-2005	Correspondence Address Change	
06-16-2005	Mail Final Rejection (PTOL - 326)	
06-13-2005	Final Rejection	
04-06-2005	Date Forwarded to Examiner	
03-24-2005	Response after Non-Final Action	301
03-24-2005	Request for Extension of Time - Granted	↑
12-29-2003	Reference capture on IDS	↑
12-20-2004	Mail Notice of Restarted Response Period	↑
12-02-2004	Letter Restarting Period for Response (i.e. Letter re: References)	↑
12-02-2004	Correspondence Address Change	↑
10-06-2004	Case Docketed to Examiner in GAU	↑
02-27-2004	Mail Non-Final Rejection	↑
02-23-2004	Non-Final Rejection	
01-22-2004	Date Forwarded to Examiner	
01-12-2004	Response after Non-Final Action	
12-29-2003	Information Disclosure Statement (IDS) Filed	
12-12-2003	Mail Non-Final Rejection	
12-09-2003	Non-Final Rejection	
11-25-2003	Date Forwarded to Examiner	
11-14-2003	Amendment after Final Rejection	31
11-14-2003	Request for Extension of Time - Granted	↑
07-14-2003	Mail Final Rejection (PTOL - 326)	↑
07-11-2003	Final Rejection	
07-01-2003	Date Forwarded to Examiner	
06-24-2003	Response after Non-Final Action	
03-31-2003	Mail Non-Final Rejection	298
03-24-2003	Non-Final Rejection	↑
03-10-2003	Case Docketed to Examiner in GAU	↑
06-06-2002	New or Additional Drawing Filed	↑
07-06-2001	Case Docketed to Examiner in GAU	↑
05-14-2001	Application Dispatched from OIPE	↑
05-11-2001	Correspondence Address Change	↑
04-19-2001	IFW Scan & PACR Auto Security Review	↑
04-06-2001	Initial Exam Team nn	↑

Close Window

Exhibit B

Search results as of: 06-02-2006::19:22:17 E.T.

This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click StartDownload.

Mail Room Date	Document Description	Page Count
05-03-2006	Power of Attorney (may include Associate POA)	19
04-03-2006	Power of Attorney (may include Associate POA)	1
03-09-2006	Notice of Allowance and Fees Due (PTOL-85)	3
03-09-2006	Notice of Allowance and Fees Due (PTOL-85)	9
03-09-2006	List of References cited by applicant and considered by examiner	5
03-09-2006	Examiner Interview Summary Record (PTOL - 413)	2
03-09-2006	Issue Information including classification, examiner, name, claim, renumbering, etc.	1
03-09-2006	Search information including classification, databases and other search related notes	1
03-06-2006	Examiner's search strategy and results	2
02-21-2006	Petition decision routed to the Technology Center Legal Instrument Examiners to act on the decision or continue prosecution.	1
02-17-2006	Petition to Withdraw from Issue	1
02-17-2006	Request for Continued Examination (RCE)	2
02-17-2006	Information Disclosure Statement (IDS) Filed	6
01-18-2006	Bibliographic Data Sheet	1
01-18-2006	Bibliographic Data Sheet	1
12-29-2005	Issue Fee Payment Recorded	1
12-29-2005	Miscellaneous Incoming Letter	4
12-14-2005	Notice of Change of Address placed in File Wrapper due to EBC Customer Number update	1
10-11-2005	Fee Worksheet (PTO-875)	1
10-04-2005	Notice of Allowance and Fees Due (PTOL-85)	3
10-04-2005	Notice of Allowance and Fees Due (PTOL-85)	9
10-04-2005	Examiner Interview Summary Record (PTOL - 413)	2
10-04-2005	Bibliographic Data Sheet	1
10-04-2005	Issue Information Including classification, examiner, name, claim, renumbering, etc.	1
10-04-2005	Search information including classification, databases and other search related notes	1
09-30-2005	Fee Worksheet (PTO-875)	1

09-28-2005	Examiner's search strategy and results	20
09-23-2005	Preliminary Amendment	2
09-23-2005	Claims	5
09-23-2005	Applicant Arguments/Remarks Made in an Amendment	1
09-11-2005	Examiner's search strategy and results	21
08-24-2005	Request for Continued Examination (RCE)	1
08-24-2005	Amendment Submitted/Entered with Filing of CPA/RCE	1
08-24-2005	Claims	5
08-24-2006	Applicant Arguments/Remarks Made in an Amendment	5
07-08-2005	Change of Address	1
06-16-2005	Final Rejection	12
06-16-2005	List of references cited by examiner	1
06-16-2005	NPL Documents	11
06-16-2005	Search information including classification, databases and other search related notes	1
06-07-2005	Examiner's search strategy and results	3
03-24-2005	Fee Worksheet (PTO-875)	1
03-24-2005	Amendment - After Non-Final Rejection	1
03-24-2005	Claims	5
03-24-2005	Applicant Arguments/Remarks Made in an Amendment	3
03-24-2005	Extension of Time	1
01-24-2005	Change of Address	1
12-20-2004	Non-Final Rejection	13
12-20-2004	List of references cited by examiner	1
12-20-2004	List of References cited by applicant and considered by examiner	1
01-12-2004	Amendment - After Non-Final Rejection	1
01-12-2004	Applicant Arguments/Remarks Made in an Amendment	5
12-29-2003	NPL Documents	4
12-29-2003	NPL Documents	14
12-29-2003	NPL Documents	12
12-29-2003	NPL Documents	10
12-29-2003	NPL Documents	12

12-29-2003	Information Disclosure Statement (IDS) Filed	1
12-29-2003	NPL Documents	4
12-12-2003	Non-Final Rejection	10
12-12-2003	List of references cited by examiner	1
12-03-2003	Examiner's search strategy and results	3
12-03-2003	Examiner's search strategy and results	8
12-03-2003	Examiner's search strategy and results	24
11-14-2003	Amendment - After Non-Final Rejection	1
11-14-2003	Applicant Arguments/Remarks Made in an Amendment	4
11-14-2003	Extension of Time	1
07-14-2003	Final Rejection	17
06-24-2003	Amendment - After Non-Final Rejection	1
06-24-2003	Claims	5
06-24-2003	Applicant Arguments/Remarks Made in an Amendment	2
03-31-2003	Non-Final Rejection	15
03-31-2003	List of references cited by examiner	1
03-20-2003	Examiner's search strategy and results	1
06-06-2002	Transmittal to TC	1
06-06-2002	Drawings	6
04-06-2001	Issue Information including classification, examiner, name, claim, renumbering, etc.	1
04-06-2001	Search Information including classification, databases and other search related notes	1
04-06-2001	Index of Claims	1
04-06-2001	Transmittal letter	2
04-06-2001	Drawings	10
04-06-2001	Specification	36
04-06-2001	Claims	6
04-06-2001	Abstract	1
04-06-2001	Oath or Declaration filed	2
04-06-2001	Bibliographic Data Sheet	1
04-06-2001	Fee Worksheet (PTO-875)	1
04-06-2001	Fee Worksheet (PTO-875)	1
04-06-2001	Claims Worksheet (PTO-2022)	1
04-06-2001	Transmittal letter	2

04-06-2001	Specification	36
04-06-2001	Claims	6
04-06-2001	Abstract	1
04-06-2001	Drawings	10
04-06-2001	Oath or Declaration filed	2

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